

# SINHA LAW

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January 19, 2018

Via US Mail, Certified, Return Receipt

**JAN 24 2018**

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Dana Davis  
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Steve Staggers  
Teichert Ready Mix  
721 Berry Street  
Roseville, CA 95678

**Re: 60-Day Notice of Violations and Intent to File Suit ("Notice") Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Teichert Ready Mix-Roseville:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.* that CEPA believes are occurring at the Teichert Ready Mix facility located at 721 Berry Street in Roseville, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this Notice is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California Central Valley Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Antelope Creek, and Dry Creek, a tributary of the Sacramento River. The Sacramento River is included on the 303(d) list as impaired for mercury and unknown toxicities.

Teichert Ready Mix-Roseville (the "Discharger") and A. Teichert & Sons, Inc. (the "Property Owner") are hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger and the Property Owner for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

The Discharger filed a Notice of Intent ("NOI") on March 30, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5S311004589.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

## **II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

### **A. Facility Operations**

The Teichert Ready Mix – Roseville facility is a concrete batch plant. Facility Operations are covered under Standard Industrial Classification Code (SIC) 3273– Ready-Mix Concrete.

Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice discharge indirectly to the Sacramento River.

B. Teichert Ready Mix's Specific Violations

*1. Failure to Collect and Analyze Storm Water Samples Pursuant to the General Permit*  
*(a) Failure to Collect and Analyze Stormwater Samples*

The Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report. As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 11/02/15, 11/08/15, 11/15/15, 12/03/15, 12/10/15 and 12/18/15;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates during facility operating hours: 01/05/16, 01/13/16, 01/22/16, 01/29/16, 02/17/16, 03/04/16, 03/10/16, 04/09/16, 04/22/16, 04/27/16, and 05/20/16;
- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 10/14/16, 10/27/16, 11/19/16, 11/26/16, 12/07/16, 12/15/16, and 12/23/16;
- d. Two storm water sample analysis for the time period January 1, 2017, through June 30, 2017. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates during regular business hours: 01/03/17, 01/07/17, 01/18/17, 02/03/17, 02/06/17, 02/17/17, 02/20/17, 03/04/17, 03/20/17, 03/24/17, 04/06/17, 04/13/17, 04/16/17 and 04/19/17; and

- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 10/19/17, 11/04/17, 11/08/17, 11/15/17, 11/27/17, and 12/21/17.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII, which provides as follows:

**XVII. CONDITIONAL EXCLUSION - NO EXPOSURE CERTIFICATION (NEC)**

A. Discharges composed entirely of storm water that has not been exposed to industrial activity are not industrial storm water discharges. Dischargers are conditionally excluded from complying with the SWPPP and monitoring requirements of this General Permit if all of the following conditions are met:

1. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
2. All unauthorized NSWDS have been eliminated and all authorized NSWDS meet the conditions of Section IV;
3. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage pursuant to the instructions in Section II.B.2; and,
4. The Discharger has satisfied all other requirements of this Section.

On February 4, 2015, Mike Fischer of the Central Valley Regional Water Board inspected the Facility and conducted an Annual Report review which indicated that samples had not been collected from qualifying storm events, and several of the required visual observations were missed.

The reports Mr. Fischer reviewed indicated that the plant had operated sporadically during those periods and was not in operation or staffed through much of the winter; that a good faith effort had been made to collect samples, but no qualifying samples were able to be collected within the first hour of discharge.

The reports also stated that non-qualifying samples were collected on days that were preceded by a storm event for internal purposes to evaluate and revise BMPs; however, the results of these samples were not attached to the report.

Based on the level of activity observed during the mid-winter inspection, the Regional Water Board found that the Facility operated frequently enough to require samples to be collected regardless of weather-related closures to maintain compliance with General Permit requirements.

*(b) Failure to Upload Stormwater Sample Collection Analyses*

Pursuant to Section XI.B.11 of the General Permit, Dischargers must submit *all sampling and analytical results* for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

The Regional Water Board's inspection of the Facility on February 4, 2015, revealed that the Facility had been collecting and analyzing storm water samples that it characterized as "non-qualifying samples collected on days that were preceded by a storm event for internal purposes to evaluate and revise BMPs," but not submitting them to the Water Board with their Annual Reports.

To date, the Facility has failed to upload into SMARTS any of its storm water collection analyses as described above.

*I. Failure to Comply with the Mandates of a RWQCB Notice*

Pursuant to Section XIX of the General Permit, Regional Water Boards have general authority to enforce the provisions and requirements of the General Permit, including reviewing SWPPPs, Monitoring Implementation Plans, ERA Reports, and Annual Reports and requiring Dischargers to revise and re-submit PRDs, conducting compliance inspections, and taking enforcement actions.

The Central Valley Regional Water Quality Control Board issued an Inspection Report Transmittal letter to the facility on February 19, 2015, with a finding that the Facility was required to collect and analyze samples, notwithstanding the Facility's claim that it closed during rain events, indicating that if samples could not be collected during the first hour of runoff due to a weather-related closure, samples should be collected as soon as possible and the results reported in future annual reports.

As indicated in Section 1, above, as of the date of this Notice, the Discharger has failed to date to collect, analyze and upload into SMARTS any storm water runoff samples since the Water Board's notice, in violation of the Board's mandate, although at least 44 qualified storm events (QSEs) have occurred since the Facility received the Water Board's order.

*II. Falsification of Annual Reports Submitted to the RWQCB*

Section XXII.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXII.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXII.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On June 23, 2016 and June 27, 2017, the Discharger submitted its Annual Reports for the Fiscal Years 2015-16 and 2016-2017 respectively. These Reports were signed under penalty of law by Brett Lehman. Mr. Lehman is not the currently designated Legally Responsible Person ("LRP") for the facility, but appears to be a Designated Authorized Representative.

Both the FY 2015-16 and 2016-17 Annual Reports included Attachment 1 as an explanation for why the Discharger failed to sample the required number of Qualifying Storm Events during the reporting years for all discharge locations, in accordance with Section XI.B. Mr. Lehman certified in both of the reports, under penalty of perjury, that the required number of samples for each of the reporting periods were not collected by the Discharger because "**there were no QSEs.**"

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during fiscal year 2015-16, there were at least 17 Qualified Storm Events (QSEs) which occurred near the Facility. During fiscal year 2016-17, there were at least 21 QSEs which occurred near the Facility.

Based on the foregoing, it is clear that Mr. Lehman made a false statement in the Facility's 2015-16 and 2016-17 Annual Reports when he indicated that the facility could not collect and analyze any storm water runoff samples because there were insufficient QSEs during the reporting years.

### *III. Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

On April 24, 2013, the Facility was inspected by Rich Muhl of the Central Valley Regional Water Quality Control Board. At the time of the site inspection, light tracking was observed on Berry Street at the exit. Mr. Muhl also noted multiple pallets of shredded tires adjacent to the shop area. The bags around the shredded tires were in poor condition. Shredded tire material was observed on the pavement in the area.

On February 4, 2015, the Facility was re-inspected by Mike Fischer to evaluate compliance with the General Permit requirements and to address incomplete annual reports submitted by the Discharger. Mr. Fischer noted during the inspection that the ground surface between the tire wash and the exit to Berry Street had some accumulation of dirt/debris. More frequent sweeping and replacement of BMPs was needed in this area as tires on exiting trucks were picking up material following the tire wash.

#### *4. Failure to Follow SWPPP*

The Discharger's current SWPPP at Section 5.6.1 – Sampling Schedule, indicates: "Stormwater samples at each discharge location will be collected and analyzed from two (2) QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)."



The SWPPP further indicates in Section 5, Table 5.2 that the Facility has one stormwater discharge location, identified as “West Trench – the Western edge of infiltration trench.” The SWPPP also indicates in Table 5.3 that the Facility has no storm water containment areas on site.

However, as indicated in Section I above, the Discharger failed to collect any samples during the Reporting Years 2015-16 and 2016-17.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility discharges to the Antelope and Dry Creeks, tributaries of Sacramento River, waters of the United States. All illegal discharges and activities described in this Notice occurred in close proximity to the above-identified waters. During storm events, discharges from the Facility are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically the Sacramento River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

### **III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Teichert Ready Mix, as well as employees of the Discharger responsible for compliance with the CWA; and A. Teichert & Son, Inc., the Property Owner.

### **IV. THE LOCATION OF THE VIOLATIONS**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Teichert Ready Mix-Roseville’s permanent facility address of 721 Berry Way in Roseville, California, and includes the adjoining navigable waters of the Sacramento River.



**V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 1, 2013, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

**VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
*1645 Willow Street, #150*  
*San Jose, CA 95125*  
*Telephone: (408) 791-0432*  
*Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)*

**VII. PENALTIES**

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Sacramento River. Members of CEPA use the Sacramento River for recreation, sports, fishing, swimming, boating, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

### **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



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Khavin Sinha

Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Copies to:

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